

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:
Family Stations, Inc.
v.
Time Warner Cable
and
RCN New York
Requests for Mandatory Carriage
of Television Station WFME-TV, West Milford,
NY
CSR 6164-M
CSR 6166-M

MEMORANDUM OPINION AND ORDER

Adopted: July 21, 2003

Released: July 23, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Family Stations, Inc. ("FSI"), licensee of television broadcast station WFME-TV (Ch. 66), West Milford, NJ ("WFME"), has filed must carry complaints with the Commission pursuant to Sections 76.7 and 76.61 of the Commission's rules, claiming that Time Warner Cable ("Time Warner") and RCN of New York ("RCN") have failed to commence carriage of WFME-TV on their respective cable systems. Time Warner and RCN filed Oppositions. WFME-TV filed a reply to each Opposition. For the reasons stated below, we dismiss the Station's carriage complaints.

II. BACKGROUND

2. Section 76.55(a) of the Commission's rules defines a non-commercial educational ("NCE") television station as any television broadcast station which is licensed by the Commission as an NCE television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association, and has as its licensee an entity eligible to receive a community service grant from the Corporation for Public Broadcasting ("CPB"). A qualified local NCE television station eligible for mandatory cable carriage must be licensed to a community whose reference point, as defined in Section 76.53 of the Commission's rules, is within 80.45km (50 miles) of the principal headend

1 47 C.F.R. §§ 76.7 and 76.61(a)(3).

2 The Time Warner Cable communities at issue are located in Bergen and Hudson Counties, NJ and Delaware, Kings, New York, Orange, Queens, Sullivan, Ulster and Westchester Counties in New York. The RCN cable community at issue is New York City.

3 47 C.F.R. § 76.55(a).

of the cable system; or whose Grade B service contour encompasses the principal headend of the cable system.⁴ A cable operator is not required to add the signal of a qualified local NCE television station not already carried under these provisions where such signal would be considered a distant signal for copyright purposes, unless such station agrees to indemnify the cable operator for any increased copyright liability resulting from carriage of such signal on the cable system.⁵

III. DISCUSSION

3. WFME asserts that it is qualified for carriage on Time Warner and RCN's cable systems. It asserts that it is a not-for-profit corporation and is licensed by the Commission as an NCE station. WFME states that the CPB eligibility requirement, under Section 76.55(a) of the Commission's rules, is inapplicable because the Corporation for Public Broadcasting has suspended the grant of any funding since 1995.⁶ WFME asserts that it provides a full or partial Grade B service contour over Time Warner's cable systems and that it is "highly likely" that its City of License, West Milford, NJ, is less than 50 miles away from those same cable systems.⁷

4. FSI states that it formally requested cable carriage from Time Warner in letters sent on September 26, 2002. FSI states that on October 31, 2002, Time Warner's systems serving Bergen, Hudson, Delaware, and parts of Sullivan and Ulster Counties sent letters to the Station claiming that WFME failed to provide the systems with a good quality signal. FSI further states that on November 6, 2002, Time Warner's system serving Kings, New York, and Queens Counties sent a letter to the Station claiming that WFME failed to provide those systems with a good quality signal. FSI states that on January 27, 2003, it sent letters to the systems offering to provide a good quality signal. According to FSI, on February 5, 2003, Time Warner responded stating that the Station's proposed method for delivering the signal was unacceptable. FSI states that one week later, it proposed an alternate signal delivery method to Time Warner and that on February 27, 2003, the operator formally denied the Station carriage rights on its systems.

5. FSI states that it formally requested cable carriage from RCN by letter dated September 26, 2002. FSI states that RCN responded on December 20, 2002 stating that system personnel would test WFME's signal strength and would advise the Station of the results. According to FSI, RCN failed to follow up on its letter. FSI asserts that it wrote a second letter to RCN on February 5, 2003, requesting the results of the signal strength tests and pledging to be responsible for the costs of delivering a good quality signal to RCN's principal headend.⁸ FSI states that RCN failed to respond to its letter of February 5th or provide it with signal strength readings.

6. Time Warner argues that WFME is not a qualified NCE station because it commenced broadcast service in 1999 and is therefore ineligible to receive a grant from CPB. Time Warner also asserts that FSI's complaint must be dismissed as untimely because it did not file its must carry complaint with the Commission within 60 days of either Time Warner's October 31, 2002 or November 6, 2002 letters formally denying the Station's carriage requests.⁹ RCN similarly argues that WFME is not a qualified NCE station and that the Station's must carry complaint is untimely.¹⁰ Specifically, RCN states

⁴ 47 C.F.R. 76.55(b).

⁵ *Id.* at (b)(3).

⁶ WFME Complaint against Time Warner at 5.

⁷ *Id.* at 6.

⁸ WFME Complaint against RCN at 2.

⁹ Time Warner Opposition at 4-5.

¹⁰ RCN Opposition at 4 and 8.

that FSI should have filed its complaint no later than December 30, 2002, 60 days after which RCN should have responded to FSI's carriage request (*i.e.*, October 30, 2002).

7. The threshold issue presented is whether WFME is a qualified commercial or a qualified noncommercial station for purposes of the Commission's must carry rules. Different carriage requirements apply depending on the station's status.¹¹ We agree with the cable operators that WFME is a "non-qualified" NCE station. Section 615(l)(1)(A)(ii) of the statute sets forth as one of its qualifications that a licensee be eligible to receive a CPB community service grant. Because it first initiated over-the-air service in 1999, four years after CPB funding ceased, WFME is not a qualified noncommercial television station. We do not agree with WFME that the CPB funding requirement is inapplicable. Although CPB ceased providing grants in 1995, the requirement remains a necessary element for a NCE station to be qualified for mandatory cable carriage under Section 615(l)(1)(A)(ii) of the Act.¹² We cannot read a requirement imposed by Congress out of the NCE mandatory carriage scheme. As a result of our conclusion, WFME it is entitled to seek carriage as a "non-qualified" NCE station pursuant to must carry regulations governing commercial stations.

8. We find that FSI's must carry complaints are untimely filed. As a non-qualified NCE television station, WFME is bound by the Commission's filing requirements under Section 76.61(a)(5) of the Commission's rules. Under this section, a commercial television station must file a must carry complaint with the Commission within 60 days after either: (1) an operator affirmatively denies carriage in response to a demand for carriage or (2) expiration of a 30 day period following the television station's demand for carriage if the operator has not responded by that time.¹³ WFME filed its complaint against Time Warner on April 28, 2003 and against RCN on May 2, 2003, well after the expiration of the filing period allowed under Section 76.61.¹⁴ As a result, WFME has lost its right to assert mandatory carriage against Time Warner and RCN for the current election cycle (January 1, 2003 to December 31, 2005). Given our conclusion here, we need not address the signal strength issue, or any other procedural or substantive issue, raised by the parties in these proceedings.

¹¹ See 47 C.F.R. § 76.56(a) and (b).

¹² 47 U.S.C. § 535(l)(1)(A)(ii).

¹³ See 47 C.F.R. § 76.61(a)(5)(i) and (ii).

¹⁴ *Accord, Frontiersvision Operating Partners, L.P.*, 17 FCC Rcd 9332 (2002). We note that our decision in *Frontiersvision* was issued several months prior to FSI's initial carriage requests.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 615 of the Communications Act of 1934, as amended, 47 U.S.C. § 535, that the complaints filed by Family Stations, Inc. **ARE DENIED** with respect to the cable systems owned by Time Warner Cable and RCN of New York in the above noted communities.

10. This action is taken pursuant to authority delegated pursuant to Section 0.283 of the Commission's rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

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¹⁵ 47 C.F.R. § 0.283.